

Resource Management Act Update

PART A: CENTRAL GOVERNMENT INITIATIVES	1
1. THE RESOURCE MANAGEMENT AMENDMENT BILL	3
Introduction	3
Section 2 – definitions	3
<i>"Biological diversity"</i>	3
<i>"Historic heritage"</i>	4
<i>"Notice of decision"</i>	4
<i>Amendment to the definition of "working day"</i>	4
Clause 3	4
<i>Amendments to ss 6 and 7</i>	4
Clause 7	5
<i>Restrictions on use of coastal marine area</i>	5
Clause 8A	5
<i>Duty to avoid, remedy or mitigate adverse effects</i>	5
Clause 9	5
<i>New ss 19 to 20A substituted</i>	5
Clause 10A	6
<i>Functions of regional councils under this Act</i>	6
Clause 10B	7
<i>Functions of territorial authorities under this Act</i>	7
Clause 11	8
<i>New ss 32 and 32A substituted</i>	8
Clause 12	8
<i>Section 33 – transfer of powers</i>	8
Clause 17	9
<i>National Environmental Standards</i>	9
<i>Clauses 28, 30 – regional and district rules</i>	9
<i>Clause 31 – types of activities</i>	9
Clause 34	10
<i>Section 88 – making an application</i>	10
Clause 35A	10
<i>New s 88B – calculating time limits for processing applications</i>	10
Clause 37	10
<i>New s 92 – further information</i>	10
<i>Notification and non-notification</i>	11
Clause 41	11
<i>Sections 104, 105A and 106 – consideration of resource consent applications</i>	11
Clause 42	12
<i>Section 108(10) – financial contributions</i>	12

Clause 43	12
<i>Section 108A – bonds</i>	12
Clause 44	12
<i>Section 114 – Notification of decision</i>	12
Clause 46	13
<i>Section 125 – lapsing of consents</i>	13
Clause 47	13
<i>Section 126 – cancellation of consent</i>	13
Clause 48	13
<i>Section 127 – change or cancellation of consent conditions</i>	13
Clauses 56, 58	14
<i>Sections 168A and 171 – council decisions or recommendations on proposed designations</i>	14
Clause 59	14
<i>Notifying decisions on designations</i>	14
Clause 60	14
<i>Section 176 – effect of designations</i>	14
Clause 69	14
<i>Section 218 – meaning of subdivision of land</i>	14
Clause 77	15
<i>Representation at Environment Court proceedings</i>	15
Clause 79A	15
<i>Security for costs</i>	15
Clauses 81 and 81A	16
<i>New declaration powers of the Environment Court</i>	16
Clauses 82 and 83	17
<i>Sections 319 and 325 – enforcement orders and abatement notices</i>	17
Clause 88A	17
<i>Restricted coastal activities</i>	17
Clause 90	17
<i>First schedule – procedures for preparing policy statements and plans</i>	17
Clause 92	17
<i>Fourth schedule – contents of AEE for resource consent application</i>	17
2. DISCUSSION PAPER ON DRAFT NATIONAL POLICY STATEMENT ON BIOLOGICAL DIVERSITY	19
Objective 1.1	19
Objective 2.1	20
Objective 3.1	20
Objective 3.2	21
Objective 3.3	21
Objective 3.4	21
Objective 3.5	22

Objective 3.6	22
Objective 4.1	22
Objective 4.2	23
Objective 4.3	23
Objective 4.4	23
PART B: CASE UPDATE ON SIGNIFICANT ISSUES	27
1. PRECEDENT AND CUMULATIVE EFFECTS UNDER THE RMA: THE <i>DYE</i> AND <i>ARRIGATO</i> DECISIONS	29
Introduction	29
The <i>Arrigato</i> decision	29
The <i>Dye</i> decision	31
Court of Appeal’s consideration of precedent and cumulative effects	33
2. AQUACULTURE REFERENCE	37
1. The interface between the fisheries legislation and the RMA	37
2. Zoning approach	39
3. Economic issues	40
4. The precautionary principle	41
5. Iwi interests	42
6. Costs and benefits	43
7. The findings of the Court	44
8. Second stage of the inquiry	44
3. THE RELEVANCE OF THE PRECAUTIONARY PRINCIPLE OR APPROACH UNDER RMA 1991	47
Introduction	47
Application of the precautionary principle by the Environment Court	47
<i>McIntyre v Christchurch City Council</i>	47
<i>Aqua Marine Limited v Southland Regional Council</i>	48
<i>Wratten v Tasman District Council</i>	48
<i>Rotorua Bore Users Association Inc v Bay of Plenty Regional Council</i>	49
<i>Shirley Primary School v Christchurch City Council</i>	49
<i>Ngati Kahu Ki Whangaroa Co-operative Society Limited v Northland Regional Council</i>	50
<i>Golden Bay Marine Farmers v Tasman District Council</i>	50
Conclusion	51
4. MAORI ISSUES	53
Introduction	53
Court of Appeal decision in <i>McGuire</i>	53
<i>Background</i>	53
<i>Court of Appeal</i>	55
Framework for assessment	56
<i>Background</i>	56
<i>Bleakley</i>	56
Consultation	59

<i>Te Kupenga O Ngati Hako Inc v Hauraki District Council & Ors (1999) 5 ELRNZ 507</i>	59
<i>Kotuku Parks Ltd & Ors v Kapiti Coast District Council (unreported, Environment Court, Wellington, A73/2000, 13 June 2000, Sheppard J)</i>	60
<i>Taueki v Horowhenua DC & Anor (unreported, Environment Court, Wellington, W 71/2000, 13 October 2000, Kenderdine J)</i>	61
<i>Ngai Tumapuhiaarangi Hapu Me Ona Hapu Karanga v Carterton District Council (unreported, High Court, Wellington, AP 6/01, 25 June 2001, Chisholm J)</i>	62
<i>Te Runanga a Iwi o Ngati Tamatera Inc v Thames & Coromandel District Council & Anor (unreported, Environment Court, Thames, A 014/01, 3 July 2001, Sheppard J)</i>	62
Conclusion	63
5. NOTIFICATION AFTER BAYLEY – RECENT DIRECTIONS IN THE APPLICATION OF SECTION 94	65
Introduction	65
The <i>Bayley</i> decision	65
Unresolved questions after <i>Bayley</i>	68
<i>Bayley’s relevance for consent applications other than restricted discretionary activities</i>	68
<i>Application of Bayley to the second limb of s 94(2)</i>	69
<i>What is the appropriate scope of the activity that consent authorities should consider under s 94(2)?</i>	70
<i>Refinement of the permitted baseline approach</i>	73
Conclusions	77
6. REVERSE SENSITIVITY	79
Introduction	79
Reverse sensitivity – background	80
<i>Gargiulo</i>	80
<i>Winstone</i>	81
Internalisation	81
Conclusion	88
PART C: PROCEDURES	89
1. MEDIATION	91
2. WORKING PARTIES	95
3. SECTION 32 CHALLENGES AND <i>KIRKLAND v DUNEDIN CITY COUNCIL</i>	97